

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,
Plaintiff,

v.

CANDELARIO SILVESTRE BELTRAN-
MUNGUIA,
Defendant.

NO. CR-05-0169-LRS

ORDER

BEFORE THE COURT, is *pro se* Defendant Beltran-Munguia's motion for relief from judgment, motion to withdraw guilty plea; and motion to arrest judgment and sentence. Defendant requests oral argument on March 30, 2006 at 9:00 a.m., although Defendant did not consult with the presiding judge's courtroom deputy to determine whether this was an available hearing date and time.

DISCUSSION

Pursuant to Local Rule 7.1 (h)(3), the Court may in its discretion determine that oral argument is not warranted and proceed to determine any motion brought under this rule without oral presentation. Further, the Court may on its own motion grant an expedited hearing under Local Rule 7.1 (h)(6). The Court will determine defendant's motions without oral presentation and on an expedited basis.

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1 Pursuant to Federal Rules of Criminal Procedure Rule 34, the
2 defendant must move to arrest judgment within 7 days after the court
3 accepts a verdict or finding of guilty, or after a plea of guilty or nolo
4 contendere, or within such time as the court sets during the 7-day
5 period. Defendant has move to arrest judgment outside of the 7-day
6 period. The Court entered an ORDER ACCEPTING GUILTY PLEA on November 9,
7 2005 (Ct. Rec. 20) and a JUDGMENT was entered on February 9, 2006 (Ct.
8 Rec. 30).

9 A "motion for arrest of judgment" is a post-verdict motion made to
10 prevent the entry of a judgment where the charging document is
11 insufficient or the court lacked jurisdiction to try the matter. This
12 is not a case where a motion to arrest judgment is appropriate as a
13 verdict has not been handed down in this matter.

14 Defendant requests to withdraw his guilty plea. Defendant pleaded
15 guilty to Count 1 on November 9, 2005. The Court imposed a sentence on
16 February 7, 2006. A defendant seeking to withdraw a guilty plea has the
17 burden of showing the existence of any fair and just reason to permit the
18 withdrawal of his guilty plea before his sentencing. Fed.Rules
19 Cr.Proc.Rule 11. Once accepted, a guilty plea may not automatically be
20 withdrawn at defendant's whim. *United States v. Brown*, 250 F.3d 811, 815
21 (3d Cir.2001). Finally, and typically, a motion to withdraw a guilty
22 plea is considered part of the direct appeal process or by a motion under
23 28 U.S.C. §2255. The Court notes that Defendant filed an appeal on
24 February 12, 2006. Accordingly,

25 **IT IS ORDERED** that Defendant's motions for relief from judgment, to
26 withdraw guilty plea, and to arrest judgment and sentence, filed on
27 February 23, 2006, shall be determined without oral presentation and on
28 an expedited basis.

